



June 7, 2018

Federal Communications Commission
Commission's Secretary, Office of the Secretary
445 12th Street, SW
Washington, DC 20554

Re: Comments on Advanced Methods to Target and Eliminate Unlawful Robocalls
CG Docket 17-59

Dear Ladies and Gentlemen of the FCC,

I am writing on behalf of the California and Nevada Credit Union Leagues (Leagues), one of the largest state trade associations for credit unions in the United States, representing the interests of more than 250 credit unions and their approximately 10.5 million members.

The Leagues welcome the opportunity to provide comments to the Federal Communications Commission (FCC or Commission) on its proposed rule to ensure that one or more databases are available to provide callers with the comprehensive and timely information they need to discover potential number reassignments before making a call. The Leagues support a single, comprehensive database that provides callers who use the database a safe harbor from Telephone Consumer Protection Act (TCPA) liability.

Background

As required by the FCC's rules, voice service providers ensure the efficient use of telephone numbers by reassigning a telephone number to a new consumer after it is disconnected by the previous subscriber. Approximately 35 million numbers are disconnected and made available for reassignment to new consumers each year. When a number is reassigned, the new subscriber of that number may receive unwanted calls intended for the previous subscriber.

In the case of prerecorded or automated voice calls (robocalls) to reassigned numbers, a good-faith caller may be subject to liability for violations of the TCPA. The League's agree this threat has had a chilling effect and has caused some credit unions to stop making wanted, lawful calls out of concern over potential liability for calling a reassigned number.

In today's environment, timely communications between credit unions and their member-owners is critical. Communications regarding account balances, overdrafts, security breaches, fraud alerts, debt avoidance, and money transfer notifications are all important communications and timeliness of those communications is key. In addition, because of the member-owner structure, credit unions also need to communicate with their members regarding governance. The FCC should make every effort to remove the threat of TCPA violations for these calls or texts to existing members for informational purposes.

Database Information, Access, and Use

The Leagues offer the following comments on the operational aspects of a reassigned numbers database.

Information a Legitimate Caller Has

The Leagues agree with the Commission that a caller would possess, at a minimum: (1) The name of the consumer the caller wants to reach; (2) a telephone number associated with that consumer; and (3) a date on which the caller could be confident that the consumer was still associated with that number. However, the date the caller has may or may not be the latest date for which the consumer was associated with the number.

For example, a credit union will likely have the date the member provided the number, but may not record the last date the credit union contacted the member at that number. Any rule should be careful not to require the “latest” date the number is associated with the member.

Information the Database Should Generate

The Leagues believe that, at a minimum, the database should be able to indicate by a “yes” or “no” response whether a number has been reassigned since a date entered by the caller and the actual date the number was reassigned. Providing the date the number was reassigned will assist credit unions in updating their records accordingly.

Define When a Number is Reassigned

Typically, the reassignment process consists of four steps: A number currently in use is first disconnected, then aged (maximum of 90 days for residential numbers), then made available for assignment, and finally assigned to a new subscriber.

The FCC proposes to provide callers with information about numbers that are disconnected. Because disconnection is a first step, the Commission believes that a database containing information on disconnected numbers will allow callers to identify at the earliest possible point when a subscriber can no longer be reached at that number.

However, the Leagues have concern with information related to disconnected numbers. If this approach is adopted service providers must be able to distinguish, and not include, numbers that have been temporarily disconnected or suspended, such as for late or non-payment.

The Leagues recommend a number be defined as reassigned once it is made available for reassignment. At that point, the number is no longer associated with the previous subscriber, i.e., the caller's intended recipient.

Reassignment Information Timeframe

The FCC asks if there is any reason to limit the reported reassignment information to a specific timeframe. The statute of limitations on collecting consumer debt varies from state to state, for this reason, the Leagues recommend the database be initially populated with number reassignment information going back as far as possible, but at least four years.

Timeliness

The FCC asks how frequently the data should be reported to maximize callers' ability to remove reassigned numbers from their calling lists before placing calls. In the proposed rule the FCC notes that approximately 35 million numbers are disconnected and made available for reassignment to new consumers each year. Given that number, nearly 96,000 numbers are made available for reassignment every day. With such a high volume of numbers turning over daily, then in order for the database to be robust and comprehensive the Leagues believe reporting should be done daily.

Format for Relevant Data

The FCC questions in what format callers need the relevant data and whether the FCC should specify the format by rule. While comma-separated values (CSV) or eXtensible Markup Language (XML) formats are likely the most common used, the Leagues suggest that callers be provided options for which format they would like to download their results.

Minimize Usage Cost

The FCC requests feedback on how the Commission might balance that service providers be compensated for the costs of reporting data to a reassigned numbers database with affordable access to the database for callers.

The Leagues are highly concerned with the potential cost for credit unions to access the database. Credit unions, the majority of which have less than \$20 million in assets, may not use the database if access is not affordable, thus leaving them in their current predicament of not making wanted, lawful calls out of concern over potential liability for calling a reassigned number.

The Leagues suggest that the fee structure for the Do Not Call Registry can provide some guidance on ways to minimize cost. For 2018 telemarketers pay \$62 for yearly access to Registry phone numbers in a single area code, up to a maximum charge of \$17,021 for all area codes nationwide, and the first five area codes are free¹.

Since credit unions serve a limited field of membership, within a limited geographic area, a similar fee structure with the first five area codes for free may help to minimize the cost for small credit unions and allow them to utilize the reassigned numbers database.

Safe Harbor from TCPA Liability

The Commission asks whether they should adopt a safe harbor from TCPA liability for those callers that choose to use a reassigned numbers database, and if so, under what circumstances the safe harbor should be triggered.

The Leagues strongly agree that use of a reassigned numbers data base be voluntary. The creation of a safe harbor, combined with affordable access to a robust and complete database, will help to incentivize usage of the database. We recommend credit unions be afforded the safe harbor when they scrub their data base monthly or no more than 31 days prior to the date a call is made.

Approaches to Database Administration

The Commission seeks comment on whether it should require service providers to report reassigned numbers information to a single, FCC-designated database; to one or more commercial data aggregators; or allow service providers to report such information to commercial data aggregators on a voluntary basis.

The Leagues support requiring service providers to report reassigned numbers information to a single, FCC-designated database. This approach would provide for one comprehensive database and not require credit unions to have to search multiple databases for this information.

Requiring service providers to report reassigned numbers information, rather than making it a voluntary process, helps to ensure the accuracy and completeness of the information. If the database is not complete, then it provides no value.

Conclusion

The Leagues support a single, comprehensive database that provides callers who use the database a safe harbor from TCPA liability. Thank you for the opportunity to comment on the Proposed Rule and for considering our views and recommendations on the availability and content of a reassigned numbers database. If you have any questions regarding our comments, please contact me.

Sincerely,

Diana R. Dykstra
President and CEO
California and Nevada Credit Union Leagues

¹ Telemarketer Fees to Access the FTC's Do Not Call Registry to Rise Slightly in FY 2018; <https://www.ftc.gov/news-events/press-releases/2017/08/telemarketer-fees-access-ftcs-do-not-call-registry-rise-slightly>